

ORIGINAL**FILED**

2007 NOV -1 PM 2:19

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY DEPUTY

1 WEISS & JONES
Philip E. Weiss, Esq.
2 1551 Shelter Island Drive
San Diego, California 92106
3 Telephone: (619) 225-8884
Facsimile: (619) 225-8801

4 Attorneys for Plaintiff
5 Bartell Hotels, a California Limited Partnership,
dba Half Moon Anchorage
6
7

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **'07CV 2097 L BLM**

11 BARTELL HOTELS, A California Limited
Partnership, dba HALF MOON ANCHORAGE,

12 Plaintiff,

13 v.

14 M/Y CLAIRE IRENE, a 1968 Owens Motor
15 Yacht of Approximately 40-Foot In Length And
11-Foot In Beam, Bearing California D.M.V.
16 Registration No. CF 8646 ED, AND ALL OF
HER ENGINES, TACKLE, ACCESSORIES,
17 EQUIPMENT, FURNISHINGS AND
APPURTENANCES, *in rem*,

18 Defendant.
19
20

Case No.

IN ADMIRALTY

APPLICATION FOR
APPOINTMENT OF SUBSTITUTE
CUSTODIAN AND FOR
AUTHORIZATION FOR
MOVEMENT OF DEFENDANT
VESSEL

F.R.C.P. Supplemental Admiralty
Rules C and E.

21 BARTELL HOTELS, a California Limited Partnership, dba HALF MOON
22 ANCHORAGE ("PLAINTIFF"), by and through its attorneys, Weiss & Jones, L.L.P.
23 respectfully requests the Court issue an Order appointing PLAINTIFF as the Substitute
24 Custodian of the Defendant Vessel, M/Y CLAIRE IRENE, a 1968 Owens Motor Yacht of
25 Approximately 40-Foot In Length And 11-Foot In Beam, Bearing California D.M.V.
26 Registration No. CF 8646 ED and all of her engines, tackle, accessories, equipment,
27 furnishings and appurtenances, etc. and all other necessities thereunto appertaining and
28 ///

1 belonging (hereinafter "DEFENDANT VESSEL"), and in support thereof represents as
2 follows:

3 1. On or about October 31, 2007, the Verified Complaint herein was filed praying
4 the DEFENDANT VESSEL be condemned and sold to pay PLAINTIFF's demands and for
5 other proper relief.

6 2. It is anticipated that the Clerk of this Court will, pursuant to Order of this Court
7 on PLAINTIFF's Application therefor, issue a Warrant for Arrest of the DEFENDANT
8 VESSEL, commanding the United States Marshal for this District to arrest and take her into
9 custody and to detain her in its custody until further Order of this Court respecting same.

10 3. It is therefore contemplated that the United States Marshal will arrest the
11 DEFENDANT VESSEL forthwith. Custody by the United States Marshal requires the
12 services of a custodian, and does not include charges for wharfage and the other services
13 usually associated with safekeeping vessels similar to the DEFENDANT VESSEL.

14 4. DEFENDANT VESSEL is located currently at PLAINTIFF's marina, known
15 as Half Moon Anchorage, located at 2131 Shelter Island Drive, San Diego, California.
16 PLAINTIFF has agreed to assume the responsibility for safekeeping the said DEFENDANT
17 VESSEL where she is currently located and to act as her custodian until further Order of this
18 Court. PLAINTIFF avers it possesses adequate experience and background to maintain the
19 DEFENDANT VESSEL safely in custody. It will provide, as necessary under the
20 circumstances, the following services for the safekeeping of the DEFENDANT VESSEL, at
21 a cost not to exceed those prevailing in the Port of San Diego, as described with further
22 particularity in the Declaration of Richard Bartell:

23 a. Assume custody of the vessel from the United States Marshal at the place of
24 her arrest, and keep her at its Marina until further Order of the Court;

25 b. As soon as possible after assuming custody of the vessel, photograph and/or
26 video tape the interior and exterior, and prepare a written inventory of equipment and
27 property aboard which is not installed as part of the vessel;

28 c. Periodically inspect mooring lines/fenders to assure safe and secure mooring;

1 d. Periodically as deemed prudent under the existing circumstances, but no less
2 than weekly, inspect the vessel for watertight integrity, excessive bilge water and fuel,
3 lubricant or other leaks. Where further action beyond those detailed herein is deemed
4 necessary to preserve the vessel, PLAINTIFF shall advise counsel, so counsel can seek an
5 appropriate order from the Court;

6 e. Provide additional services such as cleaning, minor maintenance, inspection of
7 bottom by a diver for the purpose of cleaning and reporting findings regarding underwater
8 hull, metal and zinc conditions, as such services are deemed prudent;

9 f. PLAINTIFF will operate only machinery described in a proper Court order;

10 g. Provide other such services as may be required from time-to-time, by further
11 order of the Court. All services will be invoiced at rates not exceeding those prevailing in the
12 Port of San Diego, and shall be subject to approval by the Court.

13 5. The substitute custodian will not sell the DEFENDANT VESSEL, release her
14 to anyone and/or let anyone aboard her, other than in the case of emergency.

15 6. PLAINTIFF, by the Declaration of Richard Bartell, avers that it has adequate
16 facilities and supervision for the proper safekeeping of the DEFENDANT VESSEL and that
17 it maintains insurance policies which protect it against occurrences of negligence during its
18 custodianship. Those policies include, among others: (a) commercial liability with Fireman's
19 Fund, with a per occurrence limit of \$1,000,000.00 and (b) marine liability insurance with
20 Gemini Insurance, with a per occurrence limit of \$100,000.00. PLAINTIFF does not
21 maintain hull, machinery or protection and indemnity insurance. Further, in said Declaration
22 the Substitute Custodian accepts, in accordance with the terms of the Order Appointing
23 Substitute Custodian and Authorizing Movement of the Vessel, possession of the
24 DEFENDANT VESSEL, her engines, boilers, tackle, apparel, furnishings, appurtenances,
25 etc., and all other necessities thereunto appertaining and belonging, which is the subject of
26 the action herein.

27 7. PLAINTIFF, in consideration of the U.S. Marshal's consent to the substitution
28 of custodian, agrees to release the United States and the Marshal from any and all liability

1 and responsibility arising out of the care and custody of the DEFENDANT VESSEL, her
2 engines, boilers, tackle, apparel, furnishings, appurtenances, etc., and all other necessities
3 thereunto appertaining and belonging, from the time the Marshal transfers possession of the
4 DEFENDANT VESSEL over to said Substitute Custodian, and said PLAINTIFF further
5 agrees to hold harmless and indemnify the United States and the Marshal from any and all
6 claims whatsoever arising out of the substitute custodian's possession and safekeeping.

7 **WHEREFORE**, PLAINTIFF respectfully requests that an Order issue:

8 1. Authorizing and directing the United States Marshal for the Southern District,
9 upon his seizure of said DEFENDANT VESSEL, her engines, boilers, tackle, apparel,
10 furnishings, appurtenances, etc., and all other necessities thereunto appertaining and
11 belonging, pursuant to the Warrant for Arrest; to surrender the possession thereof to the
12 Substitute Custodian named herein, and directing that upon such surrender the Marshal shall
13 be discharged from his duties and responsibilities for the safekeeping of said vessel and held
14 harmless from any and all claims whatever arising out of said substituted possession and
15 safekeeping.

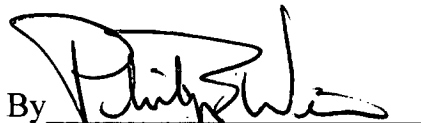
16 2. Providing that the Substitute Custodian named herein be appointed the
17 custodian of said DEFENDANT VESSEL to retain the same in its custody for possession and
18 safekeeping, with authority to move her within its marina, for the aforementioned
19 compensation, at the rates prevailing in the Port and in accordance with the Declaration of
20 Richard Bartell and the recitals herein contained, until further Order of this Court.

21 3. PLAINTIFF's attorney will serve by mail a copy of said Order to the last
22 known address of DEFENDANT VESSEL's owner or apparent owner.

23 Dated: October ~~30~~, 2007

Respectfully submitted,

WEISS & JONES

25
26 By 

Philip E. Weiss
Attorney for Plaintiff
Bartell Hotels,
a California Limited Partnership,
dba Half Moon Anchorage